Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Expanded Interconnection with Local Telephone Company Facilities	)	CC Docket No. 91-141
	)	
Amendment of the Part 69 Allocation of General Support Facilities Costs	)	CC Docket No. 92-222

OPPOSITION
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its opposition to the Emergency Petition to Hold Proceedings in Abeyance filed by MFS Communications Company, Inc. (MFS) on March 23, 1993.

In its Petition, MFS is requesting that the Commission hold in abeyance Common Carrier Bureau review of the zone density pricing plans filed by exchange carriers pursuant to the Commission's orders in CC Docket No. 91-141 until the Commission has completed a full investigation of exchange carrier term and volume discounts for interstate special access services and has prescribed new rates. The Petition also requests that the Commission postpone any action on the cost allocation changes for General Support Facilities (GSF) proposed in CC Docket No. 92-222.

USTA urges the Commission to reject the MFS Petition.[1] It is a blatant maneuver to disrupt the Commission's timetable and to upset the balance intended by the Commission in implementing rules for greater competition in the access market. It fails to qualify as an "emergency" under any standard.

This so-called "emergency" Petition is in the nature of a stay. As such, MFS' request should be denied because it does not meet the criteria necessary to stay Commission action. In Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958) the court established four criteria necessary to stay action by a Federal agency. The existence of those criteria would lead to a stay only if: the petitioner is likely to prevail on the merits; the petitioner will suffer irreparable harm unless a stay is granted; the grant of a stay will not cause substantial harm to other interested persons; and the grant of a stay will not harm the public interest. The Petition fails to meet those criteria.

First, MFS is not likely to prevail on the merits. The rates of the affected carriers are not unreasonable. MFS' request that the Commission prescribe new, cost-based rates for interstate special access services is clearly contrary to the

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[1]USTA is filing this Opposition in accordance with § 1.45(d) of the Commission's rules in response to the corrected version of the MFS Petition filed on March 24, 1993. USTA's filing is timely under any other provision of § 1.45.

Commission's price cap order, recently upheld on appeal by the U. S. Court of Appeals for the District of Columbia Circuit.[2] Substantial time and attention has already been spent analyzing and evaluating exchange carrier special access rates. The Commission specifically found that initial price cap rates were a reasonable starting point for price cap regulation.[3] Any changes in those rates which meet the Commission's price cap requirements are presumed reasonable. Those rates fully comply with price cap and other ratemaking policies. There is no basis for MFS' claim that such rates are unreasonable.

Further, it does not follow that because some special access rates involve discounts, the rates are unreasonable. Term and volume discounts reflect efficiencies in underlying network and administrative costs. The provision of term and volume discounts fosters efficient network utilization and permits exchange carriers to respond to customer needs. It would be unreasonable to expect exchange carriers to compete against competitive access providers whose own rates reflect the underlying economies of

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[2]"As the Commission plainly and explicitly recognized, deviations from fully distributed costs are in certain respects highly desireable and may tend to maximize the consumer welfare created by a regulated natural monopoly...To the extent that MCI is obliquely making a claim that the statutory 'just and reasonable' rate requirement mandates use of fully distributed costs and bars moves toward inverse elasticity prices, our precedent is squarely against it." National Rural Telecom Association v. FCC, No. 91-1300, slip op. at 16, 21 (D. C. Cir. March 26, 1993).

[3]Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786 (1990) at ¶ 241.

high capacity facilities if exchange carrier rates are prevented from doing so.

Second, even though MFS claims that it would suffer imminent and irreparable competitive harm if the zone density plans are approved and reallocation of GSF costs is adopted, MFS does not provide any evidence to support such a statement. MFS merely reiterates the same arguments it has been making in CC Docket Nos. 91-141 and 91-213 in opposing term and volume discounts for exchange carriers. MFS does not explain how it will suffer irreparable harm. MFS did not oppose the reallocation of GSF costs in CC Docket No. 92-222. MFS actually supported the Commission's proposal to correct the allocation of GSF costs so long as the new allocation would more closely approximate the "operation of market forces in a fully competitive market than does the present rule".[4] MFS does not adequately explain why it has changed its mind on this issue or why it has withdrawn its support for the development of a fully competitive market. USTA does not believe that staying Commission action to correct what the Commission itself recognizes as an over-allocation of costs would be in the public interest.

Third, grant of the Petition will result in substantial harm to other interested parties. Delaying the introduction of zone density plans and preventing exchange carriers from offering

[4]Comments of MFS filed December 4, 1992 at p. 5.

discounts will prevent exchange carriers from competing with competitive access providers, including MFS, who offer such discounts. Grant of the Petition will only serve to give MFS an unearned competitive advantage to the detriment of exchange carriers.[5] Grant of the Petition will also harm small interexchange carriers. Since larger interexchange carriers can obtain discounts from competitive access providers, smaller interexchange carriers served by exchange carriers will be disadvantaged in that they and the general body of ratepayers will be forced to pay higher prices for exchange carrier services if larger interexchange carriers abandon exchange carrier facilities for competitive access providers or their own bypass facilities. This will prevent smaller interexchange carriers, who have supported term discounts and volume discounts on entrance facilities, from competing with larger interexchange carriers. Individual customers will be harmed indirectly by the impacts this will have on exchange carriers' operating assumptions.

Finally, grant of the Petition will harm the public interest. The Commission has determined that competition is in the public interest. In CC Docket No. 91-213, the Commission's objectives are to facilitate the development of local access competition, to promote efficient use of local exchange networks

[5]The record established in CC Docket No. 91-213 shows that the magnitude of the discounts offered by competitive access providers is at least as great as those offered by exchange carriers. See, Opposition to Petitions for Reconsideration filed by GTE February 12, 1993 at p. 13.

and to continue full and fair interexchange competition. None of these objectives can be achieved if the Petition is granted. Exchange carriers will be prevented from competing for local access customers. Customers will have greater incentives to abandon local exchange networks because of the inability of exchange carriers to offer competitive prices. Small interexchange carrier customers will not be able to compete with larger interexchange carrier customers. Customers will not receive the benefits of competition identified by the Commission if the Petition is granted. Term and volume discounts offer substantial cost savings to all customers, large and small. The Petition does not provide any rationale to discontinue them.

As noted earlier, the issues raised by MFS in the Petition have already been raised in previous MFS filings in numerous dockets. As such, the Petition should be treated as improper, late-filed comments and should be rejected. This Petition is merely another attempt by MFS to further delay the ability of exchange carriers to compete by holding the rate zone plans and the related exchange carrier pricing flexibility hostage until detailed cost justification for every discount in every zone is provided. In turn, MFS can take advantage of continuing disparities in regulation to exploit the marketplace. This is a transparent effort to take advantage of Commission processes. This type of gamemanship should not be tolerated. MFS has had ample opportunity to place its concerns on the record for

Commission consideration.

Exchange carrier special access tariffs are on file with the Commission. Unlike any tariffs which may be filed by MFS, exchange carrier tariffs contain substantial cost support detail. MFS has been afforded the opportunity to petition for review of any tariff it believes to be unreasonable. The Commission's own reviews of tariffs and related zone density plans are still pending. MFS' Petition is, therefore, without merit.

Based on the foregoing, USTA urges the Commission to reject the MFS Petition.

Respectfully submitted,

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March 31, 1993

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on March 31, 1993 copies of the foregoing Opposition of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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